

1 UNITED STATES OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 Washington, D.C.
4
5

6 LA SPECIALTY PRODUCE COMPANY

7 and

CASE 32-CA-207919

9 TEAMSTERS LOCAL 70,
10 INTERNATIONAL BROTHERHOOD OF
11 TEAMSTERS

12 **RESPONDENT L.A. SPECIALTY PRODUCE CO.'S EXCEPTIONS TO**
13 **ADMINISTRATIVE LAW JUDGE'S DECISION**
14
15

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1 Pursuant to Section 102.46 of the Board's Rules and Regulations, and for the reasons set
2 forth in its Brief in Support of Exceptions to Administrative Law Judge's Decision filed
3 concurrently herewith, Respondent LA Specialty Produce Co. ("Respondent" or "LA Specialty")
4 excepts to the Administrative Law Judge's ("ALJ") Decision [JD(SF)-17-18]¹ dated June 28,
5 2018 in Case 32-CA-207919 as follows:

6 1. Respondent excepts to the ALJ's finding that, "Respondent provided no evidence
7 of economic harm aside from Wong's conjecture." (ALJD at p. 4, lines 20-21 (emphasis added))

8 This statement is not supported by the record evidence. See record including but not
9 limited to Tr. at p. 35, lines 3-21 and Tr. at p. 27, line 17 to p. 28, line 2 (customer lists have
10 "independent economic value").

11 2. Respondent excepts to the ALJ's statement/finding that "employees do not know
12 the identities of all the customers." (ALJD at p. 4, lines 28-29)

13 There is no record evidence to support the ALJ's statement/finding and it is not supported
14 by the ALJ's citation to the record.

15 3. Respondent excepts to the ALJ's statement that "General Counsel alleges that
16 these rules are category 3 rules under the Board's decision in *The Boeing Co.*, 365 NLRB No. 154
17 (2017), and therefore unlawful." (ALJD at p. 5, lines 12-14)

18 This statement is not supported as to Respondent's "Confidentiality & Non-Disclosure"
19 rule. See Counsel for the General Counsel's Motion to Withdraw Paragraph 4(a) of the
20 Complaint (dated June 27, 2018).

21 4. Respondent excepts to the ALJ's decision not to classify Respondent's rules "per
22 the categories set forth in *Boeing*. . . [u]ntil the Board makes specific determinations on which
23 categories the "Confidentiality & Non-Disclosure" and "Media Contact" rules belong, it is not
24 within my purview to assign as such." (ALJD at p. 6, n. 7, lines 48-50)

25 The ALJ's decision is not warranted and is a failure to render a decision.

26
27 ¹ The Administrative Law Judge's Decision will be referred to "ALJD" or "Decision" and the
28 Administrative Law Judge will be referred to as "ALJ." All citations to the hearing transcript will be
referred to as "Tr." followed by the appropriate page and/or line numbers. The General Counsel's exhibits
will be referred to as "GC Exh. ____."

1 5. Respondent excepts to the ALJ's statement that "Both the General Counsel and
2 Respondent presented witnesses who testified uncontradicted about the impact of the rule on the
3 employees." (ALJD at p. 7, lines 13-14)

4 The ALJ's statement is not supported by the record evidence. The General Counsel's
5 witness, Richard Fierro, did not testify as to LA Specialty's employees. Tr. at p. 18, lines 2-4,
6 and p. 20, lines 2-6.

7 6. Respondent excepts to the ALJ's finding that the "Confidentiality & Non-
8 Disclosure" rule "does not purport to protect Respondent's proprietary information of pricing and
9 discounts." (ALJD at p. 7, lines, 20-21)

10 The ALJ's finding is not supported by the record evidence. See record including but not
11 limited to GC Exh. 2, p. 2; Tr. at p. 29, lines 18-23; and p. 29, line 16 to p. 30, line 3.

12 7. Respondent excepts to the ALJ's finding that the "record lacks any evidence as to
13 whether it is well-known what customer and vendor lists are as defined by Respondent." (ALJD
14 at p. 7, lines 23-25)

15 The ALJ's finding is not supported by the record evidence. See record including but not
16 limited to Tr. at p. 28, line 12 to p. 29, line 4 (customer lists) and Tr. at p. 29, line 14 to p. 30, line
17 3.

18 8. Respondent excepts to the ALJ's finding that "Customer and vendor lists as read in
19 the rule may be read to be simply a list of customers and vendors, and not as described by
20 [Wesley] Wong." (ALJD at p. 7, lines 25-26)

21 The ALJ's finding is not supported by the record evidence. See record including but not
22 limited to GC Exh. 2, p. 2. The ALJ's finding is not supported by applicable legal authority
23 including but not limited to Boeing Company, 365 NLRB No. 154 (2018).

24 9. Respondent excepts to the ALJ's finding that the "rule" (referring to the
25 "Confidentiality & Non-Disclosure" policy) states that "customer information is confidential and
26 proprietary." (ALJD at p. 7, lines 28-29)

27 The ALJ's finding is not supported by the record evidence. See record including GC Exh.
28 2, p. 2. Additionally, the portion of the policy referred to by the ALJ is not at issue in this case.

1 See ALJD at p. 3, lines 19-36.

2 10. Respondent excepts to the ALJ's finding that there is "confusion in what
3 employees may not share regarding customers and vendors." (ALJD at p. 7, lines 33-35)

4 There is no record evidence to support this finding and is contrary to applicable legal
5 authority including but not limited to Boeing Company, 365 NLRB No. 154 (2018).

6 11. Respondent excepts to the ALJ's finding that Respondent's "'Confidentiality &
7 Non-Disclosure' rule prohibits employees from sharing customer and vendor names with third
8 parties such as a labor organization." (ALJD at p. 7, lines 38-40)

9 The ALJ's finding is not supported by the record evidence. See record including but not
10 limited to Tr. at p. 40, lines 19-23.

11 12. Respondent excepts to the ALJ's finding that Respondent's "'Confidentiality &
12 Non-Disclosure' rule fails to elucidate for employees what may be shared with third parties."
13 (ALJD at p. 7, lines 44-45)

14 The ALJ's finding is not supported by the record evidence. See record including but not
15 limited to GC Exh. 2, p. 2.

16 13. Respondent excepts to the ALJ's finding that Respondent's "'Confidentiality &
17 Non-Disclosure' business justification does not outweigh the employees' Section 7 rights."
18 (ALJD at p. 8, lines 1-2)

19 The ALJ's finding is not supported by the record evidence and is contrary to applicable
20 precedent including but not limited to Boeing Company, 365 NLRB No. 154 (2018).

21 14. Respondent excepts to the ALJ's finding that Respondent's "[Confidentiality &
22 Non-Disclosure]" rule, as written, with specific reference to 'customer/vendor lists' is vague and
23 ambiguous, and the *Boeing* balancing test tips in favor of employees' Section 7 rights." (ALJD at
24 p. 8, lines 12-14)

25 The ALJ's finding is not supported by the record evidence and is contrary to applicable
26 precedent including but not limited to Boeing Company, 365 NLRB No. 154 (2018).

27 15. Respondent excepts to the ALJ's finding that Respondent's "Confidentiality &
28 Non-Disclosure violates Section 8(a)(1) of the Act." (ALJD at p. 7, line 14)

1 The ALJ's finding is not supported by the record evidence and is contrary to applicable
2 precedent including but not limited to Boeing Company, 365 NLRB No. 154 (2018).

3 16. Respondent excepts to the ALJ's finding that Respondent's "Media Contact" rule
4 "precludes employees from speaking to the media on any subjects regarding Respondent." (ALJD
5 at p. 8, lines 30-31)

6 The ALJ's finding is not supported by the record evidence. See record including but not
7 limited to Tr. at p. 31, line 10 to p. 32, line 25, and GC Exh. 2, p. 2.

8 17. Respondent excepts to the ALJ's finding as to Respondent's "Media Contact" rule
9 that "while it is certainly a legitimate business reason for Respondent to designate whom it wants
10 to speak on its behalf, employees' Section 7 rights certainly tip the scales in their favor." (ALJD
11 at p. 8, lines 31-33)

12 The ALJ's finding is not supported by the record evidence and is contrary to applicable
13 precedent including but not limited to Boeing Company, 365 NLRB No. 154 (2018).

14 18. Respondent excepts to the ALJ's finding that Respondent's "Media Contact" rule
15 "as written does not clarify that employees may speak to the media on their own behalf but
16 clearly states that employees may not speak to the media about Respondent when approached."
17 (ALJD at p. 8, lines 43-45)

18 The ALJ's finding is not supported by the record evidence. See record including but not
19 limited to GC Exh. 2, p. 2. The ALJ's finding is contrary to applicable legal precedent including
20 but not limited to Boeing Company, 365 NLRB No. 154 (2018).

21 19. Respondent excepts to the ALJ's finding that the "second sentence of the 'Media
22 Contact' rule does not make clear to employees that they can speak to the media on their own
23 behalf. Instead, the second sentence indicates to employees that they may not speak to the media
24 about Respondent's policies which could also concern working conditions and other terms and
25 conditions of employment which impacts their Section 7 rights." (ALJD at p. 8, line 46 – p. 9,
26 line 2)

27 The ALJ's finding is not supported by the record evidence. See record including but not
28 limited to GC Exh. 2, p. 2. The ALJ's finding is contrary to applicable legal precedent including

1 but not limited to Boeing Company, 365 NLRB No. 154 (2018).

2 20. Respondent excepts to the ALJ's finding that the "Media Contact" rule "as written
3 creates a chilling effect on employees when exercising Section 7 rights." (ALJD at p. 9, lines 2-
4 3)

5 There is no record evidence to support the ALJ's finding and it is contrary to applicable
6 legal precedent including but not limited to Boeing Company, 365 NLRB No. 154 (2018).

7 21. Respondent excepts to the ALJ's finding that Respondent's "Media Contact" rule
8 "is unlawful and violates Section 8(a)(1) of the Act." (ALJD at p. 9, lines 9-10)

9 The ALJ's finding is not supported by the record evidence. See record including but not
10 limited to GC Exh. 2, p. 2. The ALJ's finding is contrary to applicable legal precedent including
11 but not limited to Boeing Company, 365 NLRB No. 154 (2018).

12 22. Respondent excepts to the ALJ's finding that Respondent's "Non-Disclosure &
13 Confidentiality" rule is "facially unlawful." (ALJD at p. 9, lines 17-26)

14 The ALJ's finding is not supported by the record evidence. See record including but not
15 limited to GC Exh. 2, p. 2. The ALJ's finding is contrary to applicable legal precedent including
16 but not limited to Boeing Company, 365 NLRB No. 154 (2018).

17 23. Respondent excepts to the ALJ's finding that Respondent's "Non-Disclosure &
18 Confidentiality" rule violates Section 8(a)(1)." (ALJD at p. 9, lines 17-26)

19 The ALJ's finding is not supported by the record evidence. See record including but not
20 limited to GC Exh. 2, p. 2. The ALJ's finding is contrary to applicable legal precedent including
21 but not limited to Boeing Company, 365 NLRB No. 154 (2018).

22 24. Respondent excepts to the ALJ's conclusion of law that Respondent's
23 "Confidentiality & Non-Disclosure" rule "could be understood to prohibit employees from
24 engaging in activities protected by Section 7 of the Act." (ALJD at p. 9, lines 17-26)

25 The ALJ's finding is not supported by the record evidence. See record including but not
26 limited to GC Exh. 2, p. 2, and Tr. at p. 34, lines 7-10. The ALJ's finding is contrary to
27 applicable legal precedent including but not limited to Boeing Company, 365 NLRB No. 154
28 (2018).

1 25. Respondent excepts to the ALJ's conclusion of law that Respondent's "Media
2 Contact" rule is "facially unlawful." (ALJD at p. 9, lines 17-33)

3 The ALJ's finding is not supported by the record evidence. See record including but not
4 limited to GC Exh. 2, p. 2. The ALJ's finding is contrary to applicable legal precedent including
5 but not limited to Boeing Company, 365 NLRB No. 154 (2018).

6 26. Respondent excepts to the ALJ's conclusion of law that Respondent's "Media
7 Contact" rule "violates Section 8(a)(1)." (ALJD at p. 9, lines 17-33)

8 The ALJ's finding is not supported by the record evidence. See record including but not
9 limited to GC Exh. 2, p. 2, and Tr. at p. 34, lines 7-10. The ALJ's finding is contrary to
10 applicable legal precedent including but not limited to Boeing Company, 365 NLRB No. 154
11 (2018).

12 27. Respondent excepts to the ALJ's conclusion of law that Respondent's "Media
13 Contact" rule "could be understood to prohibit employees from engaging in activities protected
14 by Section 7 of the Act." (ALJD at p. 9, lines 17-33)

15 The ALJ's finding is not supported by the record evidence. See record including but not
16 limited to GC Exh. 2, p. 2, and Tr. at p. 34, lines 7-10. The ALJ's finding is contrary to
17 applicable legal precedent including but not limited to Boeing Company, 365 NLRB No. 154
18 (2018).

19 28. Respondent excepts to the ALJ's conclusion of law that Respondent violated
20 Section 8(a)(1) by maintaining the "Non-Disclosure & Confidentiality" rule. (ALJD at p. 9, lines
21 17-33)

22 Based on the above Exceptions, the ALJ's conclusion of law is not supported by the
23 record evidence and/or applicable legal authority including but not limited to Boeing Company,
24 365 NLRB No. 154 (2018).

25 29. Respondent excepts to ALJ's conclusion of law that Respondent violated Section
26 8(a)(1) by maintaining the "Media Contact" rule. (ALJD at p. 9, lines 17-33)

27 Based on the above Exceptions, the ALJ's conclusion of law is not supported by the
28 record evidence and applicable legal authority including but not limited to Boeing Company, 365

1 NLRB No. 154 (2018).

2 30. Respondent excepts to ALJ's recommended Remedy. (ALJD at p. 9, lines 40-44)

3 Based on the above Exceptions, the ALJ's recommended Remedy is not supported by the
4 record evidence and applicable legal authority including but not limited to Boeing Company, 365
5 NLRB No. 154 (2018).

6 31. Respondent excepts to the ALJ's recommended Order. (ALJD at p. 10, lines 5-38)

7 Based on the above Exceptions, the ALJ's recommended Order is not supported by the
8 record evidence and/or applicable legal authority including but not limited to Boeing Company,
9 365 NLRB No. 154 (2018).

10 32. Respondent excepts to Section 1(a)(i) of the ALJ's recommended Order that
11 Respondent cease and desist from maintaining the "Confidentiality & Non-Disclosure" rule.
12 (ALJD at p. 10, lines 9-18)

13 Based on the above Exceptions, Section 1(a)(i) of the ALJ's recommended Order is not
14 supported by the record evidence and/or applicable legal authority including but not limited to
15 Boeing Company, 365 NLRB No. 154 (2018).

16 33. Respondent excepts to Section 1(a)(ii) of the ALJ's recommended Order that
17 Respondent cease and desist from maintaining the "Media Contact" rule. (ALJD at p. 10, lines 9-
18 12 and 20-25)

19 Based on the above Exceptions, Section 1(a)(ii) of the ALJ's recommended Order is not
20 supported by the record evidence and/or applicable legal authority including but not limited to
21 Boeing Company, 365 NLRB No. 154 (2018).

22 34. Respondent excepts to Section 1(b) of the ALJ's recommended Order that
23 Respondent cease and desist from "[i]n any like or related manner interfering with, restraining, or
24 coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."
25 (ALJD at p. 10, lines 9 and 27-29)

26 Based on the above Exceptions, Section 1(b) of the ALJ's recommended Order is not
27 supported by the record evidence and/or applicable legal authority including but not limited to
28 Boeing Company, 365 NLRB No. 154 (2018).

1 35. Respondent excepts to Section 2(a) of the ALJ's recommended Order that
2 Respondent rescind the unlawful rules as set forth above. (ALJD at p. 10, lines 30-33)

3 Based on the above Exceptions, Section 2(a) of the ALJ's recommended Order is not
4 supported by the record evidence and/or applicable legal authority including but not limited to
5 Boeing Company, 365 NLRB No. 154 (2018).

6 36. Respondent excepts to Section 2(b) of the ALJ's recommended Order that
7 Respondent "furnish employees with insert to its LA & SF Specialty Employee Manual regarding
8 Confidentiality & Non-Disclosure and Media Contact rules that (1) advise that the unlawful rules
9 have been rescinded, or (2) provide lawfully worded rules." (ALJD at p. 10, lines 31-38)

10 Based on the above Exceptions, Section 2(b) of the ALJ's recommended Order is not
11 supported by the record evidence and/or applicable legal authority including but not limited to
12 Boeing Company, 365 NLRB No. 154 (2018).

13 37. Respondent excepts to the ALJ's recommended Order that Respondent cease and
14 desist from maintaining the "Media Contact" rule. (ALJD at p. 10, lines 9-12 and 20-25)

15 Based on the above Exceptions, the ALJ's recommended Order that Respondent cease and
16 desist from maintaining the "Media Contact" rule is not supported by the record evidence and/or
17 applicable legal authority including but not limited to Boeing Company, 365 NLRB No. 154
18 (2018).

19 38. Respondent excepts to Section 2(c) of the ALJ's recommended Order. (ALJD at
20 p. 11, lines 1-17)

21 Based on the above Exceptions, Section 2(c) of the ALJ's recommended Order is not
22 supported by the record evidence and/or applicable legal authority including but not limited to
23 Boeing Company, 365 NLRB No. 154 (2018).

24 Respondent excepts to Section 2(c) of the ALJ's recommended Order that Respondent
25 post the notice marked as "Appendix." (ALJD at p. 11, lines 1-17)

26 Based on the above Exceptions, Section 2(c) of the ALJ's recommended Order is not
27 supported by the record evidence and/or applicable legal authority including but not limited to
28 Boeing Company, 365 NLRB No. 154 (2018).

1 39. Respondent excepts to Section 2(d) of the ALJ's recommended Order. (ALJD at
2 p. 11, lines 18-20)

3 Based on the above Exceptions, Section 2(d) of the ALJ's recommended Order is not
4 supported by the record evidence and/or applicable legal authority including but not limited to
5 Boeing Company, 365 NLRB No. 154 (2018).

6 40. Respondent excepts to the "Notice to Employees" attached as "Appendix."
7 (ALJD, Appendix)

8 41. Based on the above Exceptions, requiring Respondent to post the "Notice to
9 Employees" is not supported by the record evidence and/or applicable legal authority including
10 but not limited to Boeing Company, 365 NLRB No. 154 (2018).

11 WHEREFORE, based on the above Exceptions and the Brief of Respondent L.A.
12 Specialty Produce Co. in Support of Exceptions to Administrative Law Judge's Decision filed
13 concurrently herewith, Respondent L.A. Specialty Produce Co. requests that the Board find that
14 Respondent did not violate Section 8(a)(1) of the Act. Respondent further requests that the Board
15 reject the ALJ's findings, conclusions of law, recommended Remedy, recommended Order, and
16 "Notice to Employees."

17
18 DATED: August 9, 2018

HILL, FARRER & BURRILL LLP
James A. Bowles, Esq.
Richard S. Zuniga, Esq.

20
21 By: Richard S. Zuniga
22 Richard S. Zuniga
23 Attorneys for Respondent
24 L.A. SPECIALTY PRODUCE CO.
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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 300 South Grand Avenue, 37th Floor, Los Angeles, California 90071-3147.

I hereby certify that on August 9, 2018, I caused the foregoing document described as **RESPONDENT L.A. SPECIALTY PRODUCE CO.'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION** in Case 32-CA-207919 to be filed via E-Filing.

I hereby also certify that on August 9, 2018, I electronically mailed a copy of the foregoing document and caused a true copy thereof to be placed in a sealed envelope with postage thereon fully pre-paid and addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 9, 2018, at Los Angeles, California.


Richard S. Zuniga

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